

## **REMARKS**

### **I. The Reason for this RCE**

A Notice of Allowance was mailed to the undersigned on 25 June 2006. During a review of the file in advance of payment of the Issue Fee, it was discovered that several prior art documents relied upon by the examiner of the parent application (i.e., USSN 09/034,836, of which the instant application is a divisional as the result of a PTO restriction requirement) were inadvertently and unintentionally not brought to the attention of the examiner during the prosecution of the instant application. As a result, Applicants are filing this RCE, including an IDS citing the prior art relied upon by the examiner of the parent application. Moreover, the IDS includes a copy of each of the various office actions on the merits for USSN 09/034,836, as well as Applicants' various amendments in response to those office actions. Also provided below are remarks in support of the patentability of Applicants' claims over this prior art.

### **II. The Pending Claims and the Amendments to the Claims**

With the entry of the amendment set forth above, Claims 22-50 are pending. Claim 22 is the only pending independent claim. There are no amendments to Claims 22-46.

New Claim 47 depends from independent Claim 22 and recites the third layer of the multilayer film as comprising at least one member selected from the group consisting of amorphous polyester and polyester having a melting point of from about 130°C to less than 190°C, and that the fourth layer of the multilayer film comprises at least one member selected from the group consisting of polyester having a melting point of at least 190°C, polyamide, and polyurethane. Support for  
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Claim 47 can be found in the specification at, for example, page 26 lines 3-10 and page 27 lines 19-25.

New Claim 48 recites the multilayer film as further comprising a fifth layer which serves as an O<sub>2</sub>-barrier layer and which is between the third layer and the fourth layer, the fifth layer comprising EVOH. Support for Claim 48 can be found in the specification at, for example, Page 5 lines 11-14.

New Claim 49 recites the multilayer film as further comprises a sixth layer which comprises at least one member selected from the group consisting of amorphous polyester and polyester having a melting point of from about 130°C to less than 190°C, the sixth layer being between the fourth layer and the fifth layer. Support for Claim 49 can be found in the specification at, for example, page 5 lines 11-20 and page 29 lines 15-20.

New Claims 50 and 51 depend from different claims, but each recites the fourth layer as comprising polyester having a melting point of at least 190°C. Support for claims 50 and 51 can be found in the specification at, for example, page 27 lines 19-25.

The amendments include no new matter.

### III. Remarks in Support of Patentability of Claims 22-51

Applicants point out that each of Claims 22-51 is directed to a process including the steps of stacking at least a first and second bagged products on top of one another and thereafter sealing the bags so that the each product is completely sealed within its respective bag, the sealing being carried out at a temperature so that the resulting packaged products can be freely

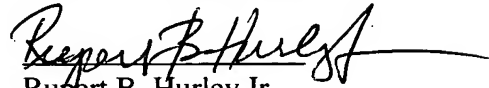
separated from one another without layer delamination. None of the various prior art documents included in the IDS submitted herewith teaches or suggests a stack sealing process. Accordingly, the prior art identified in the accompanying IDS does not set forth an anticipation of any one or more of Claims 22-51.

Moreover, in the parent application the PTO issued a restriction requirement. In issuing the restriction requirement, the PTO has taken the position that the film claims (examined in the parent application) are patentably distinct from the process claims. As such, all claims directed to the process are patentably distinct (i.e., patentable over) all prior art which teaches or suggests the film claimed in the parent application, so long as that prior art does not also teach or suggest the steps utilizing the packaging process recited in the patentably distinct process claims. In other words, in issuing the restriction requirement the PTO has gone on record with the position that the process claims, as filed in the parent application, are patentably distinct from the film claims, as filed in the parent application. Not only does this position limit the utility of art which does not teach or suggest the recited process steps, it also bars a double patenting rejection of the process claims over the article claims. Finally, Applicants further note that new Claims 47-51 recite various features placed into the independent Claim 1 of the parent application, which was granted as USPN 6,610,392 B1 on August 26, 2003.

#### IV. Conclusion

Applicants respectfully request entry of the above amendments to the claims, and consideration of the patentability of claims 22-51, with a view towards allowance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Rupert B. Hurley Jr.", with a long horizontal flourish extending to the right.

Rupert B. Hurley Jr

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